

Appl. No. 10/031,922
Petition to Withdraw from Issue Under 37 C.F.R. § 1.313(c)

III. REMARKS

Status

Claims 1-7, 10-31, 33-45, 48, 51 and 52 were allowed by the Examiner on April 1, 2005.

Applicant paid the issue fee on June 28, 2005.

Claim 21 is unpatentable under 35 U.S.C. § 112, para. 2

In reviewing the allowed claims, Applicant has determined that allowed claim 21 is unpatentable under 35 U.S.C. § 112, para. 2 for listing an improper *Markush* group. Claim 21 as allowed reads:

21. The composition of claim 20, wherein said sedative or hypnotic is scopolomine, fexofenadine, or methaqualone.

Fexofenadine is not a hypnotic and was inadvertently listed in claim 21. Its inclusion in claim 21 renders the claim invalid as there is no relationship between fexofenadine and the other listed *Markush* group members. It is not in a recognized physical, chemical, or other art-related class with the other members, nor does it share any common property. Fexofenadine is also not identified in the Specification as a sedative or hypnotic. See Specification at p. 18, lines 3-19.

Instead, fexofenadine is a well recognized antihistamine as recited in the Specification at p. 16, line 14. Fexofenadine is further properly claimed as an antihistamine in allowed claims 13 and 14.

In light of the above, the Applicant has amended claim 21 to delete fexofenadine as follows:

21. The composition of claim 20, wherein said sedative or hypnotic is scopolomine, ~~fexofenadine~~, or methaqualone.

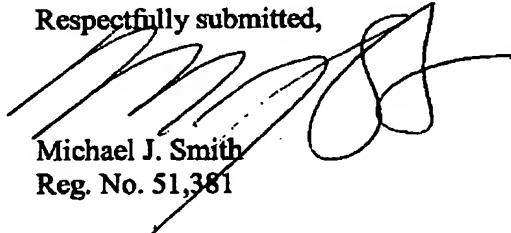
Both scopolamine and methaqualone are recognized sedative or hypnotics as listed in the Specification at p. 18, lines 11 and 18. Thus, the amended claim is patentable.

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Conclusion

Based on the remarks above, the Applicant respectfully requests that the present application be withdrawn from issue for consideration of the amendment to claim 21. In addition, based on the amendment of claim 21 and remarks herein, claim 21 is now patentable and in condition for allowance with all other previously allowed claims and such favorable action is respectfully requested. If the Office of Petitions or the Examiner has any questions or comments that might assist in this petition or subsequent reconsideration of the claims, they are invited to contact the undersigned representative at (512) 542-8530.

Respectfully submitted,



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